THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI G.V.SEETHAPATHY

W.P.No.11025 of 2006

Date: 02.01.2007

Between:
K.Bala Narasaiah S/o Obaiah, aged 45 years
Forest Section Officer, Konduru Section,
Sidavatan Range, Kadapa District

… Petitioner

And:
The Principal Chief Conservator of Forests
Government of Andhra Pradesh, Hyderabad
Hyderabad & others

…. Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI G.V.SEETHAPATHY

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W.P.No.11025 of 2006

ORDER: (Per Hon'ble Sri Justice G.V.Seethapathy)

This writ petition is filed seeking writ of Mandamus declaring the Proceedings Rc.No.2365/2003/P3 dated 28.3.2002 issued by the first respondent and appointing Member, Commissionerate of Enquiries as Enquiry Authority by UO Note No.1/C.O.I-DR/2002 GA (M.C.O.I.DR) Department, dated 05.09.2002 issued by fourth respondent and consequential proceedings No.25236/02/K1 dated 8.9.2003 issued by the first respondent, as arbitrary, illegal, discriminatory and *malafide*, violating Articles 14 and 21 of the Constitution of India apart from ultra-vires to Section 2 of Public Servants (Enquiries) Act, 1950 and Rule 20 of A.P.C.S.(CCA) Rules,1991 (for short 'CCA Rules') and to set aside the same, as also the orders of the A.P. Administrative Tribunal dated 24.01.2006 in OA No.6124 of 2003 and dated 4.5.2006 in Review M.A.No.426 of 2006.

2. The writ petitioner was working as Forest Section Officer in Siddavatam Range, Kadapa District and in the course of execution of works under 'Neeru-Meeru' programme; certain irregularities were detected during the inspection conducted by the Conservator of Forests from 11.12.2001 to 14.12.2001. The first respondent-Principal Chief Conservator of Forests, instructed the 2nd respondent-

Conservator of Forests, to conduct an enquiry and fix the responsibility on the concerned for booking excess amounts. The Conservator of Forests directed 3rd respondent-Divisional Forest Officer to inspect and submit a report. The 3rd respondent-Divisional Forest officer inspected the works on 17.1.2002 and submitted a report observing that there was deviation of excess expenditure due to employing machines instead of executing the work manually and booking manual rate as if the work was executed by engaging manual labour. The Conservator of Forests, Kurnool submitted a report dated 25.01.2002 to the first respondent, recommending initiation of disciplinary action against the petitioner and others. The Government-GAD Department-5th respondent initially appointed Sri C.Krishnam Raju as Member, Commissioner of Enquiries by GO Rt.No.623 GAD dated 7.2.2002 for enquiring into the irregularities and implementation of 'Food for work programme' and 'neeru-meeru' programme. The first respondent by impugned proceedings dated 28.3.2002 issued a charge memo framing articles of charge alleging that the petitioner booked excess expenditure of Rs.1,28,329/- in execution of CCC/P.T under Neeru Meeru programme. The petitioner submitted an explanation on 25.2.2003. Subsequently 5th respondent-Government (GAD) issued G.O.Rt.No.4688 GAD dated 23.8.2002 appointing Sri B.P.Venkateswarlu, Engineer-in-Chief (Irrigation & CADA) as Member, Commissioner of Enquiries and issued UO Note dated 5.9.2002 allocating certain cases including that of the petitioner to Sri B.P.Venkateswarlu. The Member, Commissioner of Enquiries conducted preliminary enquiry on 22.10.2002 and subsequently examined Dr.K.Gopinath, D.F.O., Kadapa as sole witness and came to the conclusion that the work was executed by machines instead of engaging manual labour and excess expenditure of Rs.1,28,329/- was booked. Based upon the report of the Member, Commissioner of Enquiries, the first respondent issued final notice dated 26.4.2003,

enclosing copy of the report and seeking further written statement. The petitioner submitted his explanation to the show cause notice on 6.6.2003. The first respondent has not taken any decision and left the matter to the discretion of the government, who is the Revisional Authority. The Government issued memo dated 7.9.2003 permitting the first respondent to impose penalties of compulsory retirement and also indicating certain punishments against each of the officers whose names were mentioned in the memo and directing to take action and send compliance report. The petitioner approached A.P. Administrative Tribunal (for short 'Tribunal') by filing O.A.No.6249 of 2003 challenging the charge memo and the appointment of Member, Commissioner of Enquiries as Inquiry Officer as well as the final show cause notice. The Tribunal while admitting the O.A. passed interim orders on 16.09.2003 directing the respondents not to proceed further in pursuance of the final show cause notice. Meanwhile, the petitioner received impugned proceedings dated 08.09.2003 imposing punishment of compulsory retirement, through Forest Range Officer. The petitioner filed miscellaneous application for amendment of the prayer and also seeking suspension of major penalty. The Tribunal by order dated 26.09.2003 allowed miscellaneous application and suspended major penalty of compulsory retirement. Subsequently, the Tribunal dismissed the O.A., along with batch by impugned judgment dated 24.01.2006. The Tribunal however allowed batch of cases on the ground that punishment was imposed by the first respondent as per directions given by the Government and without independent application of mind. But the Tribunal dismissed the applications filed by the petitioner and some others, on the ground that the memo issued by the Government was not filed before the Tribunal. The petitioner filed review application and initially the Tribunal by order dated 14.2.2006 suspended the order passed in the O.A., subsequently by order dated 4.5.2006, the Tribunal dismissed the review application on the ground that the petitioner has not raised that ground in the main

O.A. and he has not produced the memo issued by the Government. Thereafter the petitioner filed the present writ petition.

3. Arguments of the learned counsel for the writ petitioner and learned Government Pleader for Services are heard. Records are perused.

4. Learned counsel for the petitioner contended that the first respondent being an appellate authority ought not to have acted as Disciplinary Authority and issued the charge memo by the impugned proceedings dated 28.3.2002 regarding the alleged excess booking of expenditure to an extent of Rs.1,28,329/-. He further contended that the appointment of Sri C.Krishnam Raju, Member, Commissioner of Enquiries by G.O.Rt.No.623 GAD dated 7.2.2002 and subsequently replacing him Sri B.P.Venkateswarlu, as Member, Commissioner of Enquiries by G.O.Rt.No.4688 dated 23.8.2002 and entrusting certain cases including that of the petitioner by U.O. Note dated 5.9.2002 by the Government, which is a Revisional Authority, is not in accordance with the procedure prescribed under A.P.C.S. (CCA) Rules 1991, particularly Rule 20 under which, the Disciplinary Authority alone is competent to issue a charge memo and to receive explanation from the delinquent officer and take a decision whether to proceed further or not and to conduct an enquiry by itself or by appointing Enquiry Officer. The procedure adopted by the first respondent and the Government are violative of statutory Rules i.e., AP CS (CCA) Rules 1991 issued under Article 309 of the Constitution of India. Learned counsel for the petitioner would further contended that the enquiry authority did not make any independent enquiry, but merely relied upon the report given by Dr.K.Gopinath, D.F.O., Kadapa who was examined as sole witness and submitted his findings in terms of the report of Dr.K.Gopinath. Learned counsel for the petitioner further contended that after receiving the explanation of the petitioner to the final show cause notice dated 26.4.2003, the first respondent, who is not a disciplinary authority, but

still acted as a disciplinary authority, did not however take any decision of his own and left the matter to the discretion of the government, who is a Revisional Authority and on the instructions issued by the government by way of memo dated 7.9.2003,imposed penalty of compulsory retirement and issued proceedings imposing the said punishment in compliance with the directions of the government, but has not acted independently and thereby the impugned proceedings dated 8.9.2003 imposing major penalty of compulsory retirement are vitiated by non-application of mind and abdication of authority. Learned counsel for the petitioner further contended that the Tribunal having allowed a batch of O.As., filed by other officers who are similarly placed however, dismissed the O.A. filed by the petitioner and some others, on the ground that the memo dated 7.9.2003 is not filed before the Tribunal, even though the said memo was very much available in the records called for by the Tribunal. He further contended that the Tribunal has erroneously dismissed the review application also on the same ground.

5. Learned Government Pleader for Services on the other hand contended that under CCA Rules, the Government or any Authority duly authorized by the government is competent to initiate disciplinary action against the erring employees and the Member, Commissioner of Enquiries is appointed as Enquiry Authority under CCA Rules, as large number of irregularities in execution of the works under 'Food for work' and 'Neeru Meeru' programmes, came to light and enquiry was conducted by the Member, Commissioner in accordance with the Rules and after affording sufficient opportunity of hearing and by following the principles of natural justice and the petitioner having submitted himself to the jurisdiction of the enquiring authority is precluded from questioning the same once the charge is proved against him. He further contended that the first respondent, competent authority, while furnishing copy of the report to the petitioner, issued

final show cause notice and after receiving the further explanation of the petitioner, imposed the major penalty of compulsory retirement with due application of mind and the government memo dated 7.9.2003 is nowhere referred to in the impugned proceedings dated 8.9.2003 imposing punishment and hence, the question of abdication of authority does not arise.

6. It is not disputed that large scale irregularities were detected in execution of the works under “Food for Work” and “Neeru Meeru” programmes and disciplinary action was initiated against several officers of different cadres including the petitioner. The charge against the petitioner, who was then working as Forest Section officer, was that he has booked excess expenditure to a tune of Rs.1,28,329/- by showing as if the work was executed by engaging manual labour though in fact it was accomplished through machines and misappropriated the said amount.

7. The first contention of the petitioner is regarding competency of the first respondent-Principal Chief Conservator of Forests to act as disciplinary authority. According to him, the first respondent is only an appellate authority and the government is a Revisional Authority and the first respondent cannot take upon himself the role of disciplinary authority and issue impugned charge memo dated 28.3.2002 framing article of charge. In the said memo, it was proposed to hold enquiry against the petitioner, in accordance with the procedure laid down under Rule 20 of CCA Rules 1991. Rule 19 of the said CCA Rules, lays down that the Government or any other authority empowered by the general or special orders may – (a) institute disciplinary proceedings against any government servant; (b) direct the disciplinary authority to institute disciplinary proceedings against any government servant on whom that disciplinary authority is competent to impose under these rules, any of the penalties specified under Rule 9 or Rule 10. Thus the above Rule makes it clear that the disciplinary action can

be initiated by the government or any other authority duly empowered in that behalf either directly or they may direct disciplinary authority to institute disciplinary proceedings. The contention of the learned counsel for the petitioner that the disciplinary proceedings shall invariably be initiated only by the disciplinary authority is therefore, untenable.

8. The next contention of the writ petitioner is that the appointment of Member, Commissionerate of Enquiries to conduct the enquiry is violative of CCA Rules. It is to be noted that the member, Commissionerate of Enquiries was appointed under Rule 20(2) of CCA Rules 1991 to enquire into the charge framed against the petitioner and several others and not under the provisions of Public Servants (Enquiries) Act 1850, as sought to be projected by the petitioner. The Tribunal has therefore rightly rejected the contention of the petitioner by observing that the provisions contained in the Public Servants (Enquiries) Act 1850 are totally different and distinct and the respondents have not taken resort to the said Act and the Member, Commissionerate of Enquiries was appointed only under the provisions of CCA Rules with a view to expedite finalization of disciplinary proceedings, as large number of officers of both gazetted and non gazetted cadres were involved. The contention of the petitioner that the appointment of Member, Commissionerate of Enquiries as Enquiry Officer is violative of CCA Rules, is therefore misconceived.

9. The third contention of the petitioner is that enquiry authority has not conducted any independent enquiry but merely relied upon the preliminary enquiry report of Dr.K.Gopinath to base his findings. It is an established principle of law that this Court while exercising the jurisdiction under Article 226 of the Constitution of India cannot go into the question of adequacy or otherwise of the evidence in support of the finding recorded by the enquiry authority and re-appraisal of the

evidence produced before the enquiry authority is not permissible.

10. A perusal of the record shows that the Commissioner of Enquiry has conducted the enquiry after giving reasonable opportunity to the delinquent officers at every stage and submitted his report. The petitioner has not been able to show that there has been violation of any of the principles of natural justice in the course of conducting enquiry or that there was any resultant bias or prejudice vitiating the proceedings. The petitioner has never questioned any of the impugned proceedings either at the threshold or during the course of enquiry and on the other hand subjected himself to the jurisdiction of enquiring authority and only after the verdict went against him holding the charge proved, he filed O.A. challenging the issuance of the charge memo and the competency of first respondent to initiate proceedings. So long as the proceedings were initiated by the competent authority and enquiry was conducted duly following the principles of natural justice and in accordance with rules, it is not open for the petitioner to question the finding recorded by the enquiring authority on the ground that the evidence adduced in support thereof is not adequate. When the findings recorded by the enquiring authority are shown to be based on evidence, the adequacy or otherwise of the said evidence to record the said findings cannot be gone into in the present proceedings.

11. The next contention of the petitioner is that the imposition of major penalty of compulsory retirement is wholly vitiated due to non application of mind and total abdication of the responsibility on the part of the first respondent. It is not disputed that the government did in fact issue Memo No.915 dated 7.9.2003, wherein, it is stated that the government after careful examination of the matter decided to permit the Principal Chief Conservator of Forests to impose penalty against the subordinates of the Forest Department as indicated against each of them for the irregularities committed in implementation of ‘neeru meeru’ programme. The memo refers to 19 officers of different cadres

including the petitioner, who is placed at Sl.No.5 and different types of punishments are indicated for different officers. The memo further directs the Principal Chief Conservator of Forests to take action accordingly and send compliance report to the government immediately. In the reference column of the memo various letters, which emanated from the office of PCCF are referred to and towards the end of the memo, it is stated that the connected records/material papers/M. books pertaining to this issue were returned to Principal Chief Conservator of Forests.

12. It is not disputed that based on the memo dated 7.9.2003 issued by the government and in compliance thereof, proceedings imposing punishment as indicated in the memo were issued against several officers. A batch of O.As., filed by those officers were also allowed by the Tribunal holding that imposition of the punishment as directed by the government is vitiated because there was no application of mind and independent assessment on the part of the competent authority-first respondent. However, when it came to the case of the petitioner and some others, the Tribunal dismissed O.As., filed by them observing that the memo dated 7.9.2003 issued by the government was not placed on record. The entire record was called for by the Tribunal. The memo was very much available on the record. Non filing of the said record which is internal correspondence between the government and the Principal Chief Conservator of Forests and a copy of which is not marked to the petitioner, is not fatal to the maintainability of the O.A., especially when issuance of such a memo by the government is not in dispute. When review applications were filed by the petitioner and others, the same were also dismissed by the Tribunal on the ground that the said memo dated 7.9.2003 is not referred in the impugned proceedings dated 8.9.2003 issued by the first respondent and also observing that the applicants in their O.As., have not raised the question of independent application of mind on the

part of the disciplinary authority. It is to be noted that by the time the petitioner filed OA No.6108 of 2003 on 5.9.2003, he was not served with the impugned proceedings dated 8.9.2003 imposing the punishment of compulsory retirement. He was served with the said proceedings on 25.9.2003 by the Forest Range officer and thereupon he filed M.A. No.3464 of 2003 for amending prayer in that O.A. and challenged the major penalty of compulsory retirement and the said application for amendment was allowed and the Tribunal suspended the proceedings dated 8.9.2003. The fact that the petitioner did not file copy of the memo dated 7.9.2003 issued by the government is of no consequence at all and in fact he had no occasion to file the said memo before the Tribunal as it was not communicated to him. Though the said memo dated 7.9.2003 is not specifically referred to in the proceedings dated 8.9.2003 issued by the first respondent, the fact remains that the first respondent did in fact refer the matter to the government along with relevant records of all the cases including that of the petitioner and on careful examination of the matter, it was the Government which decided to impose penalties as indicated in the memo and permitted the first respondent to act accordingly and report compliance.

13. A careful perusal of the memo dated 7.9.2003 which was issued by the government clearly establishes that the decision to impose various punishments indicated against the officers named therein was taken by the government and a direction was given to the first respondent merely to comply with the decision of the government and send a compliance report. Whether or not the said memo dated 7.9.2003 is actually referred to in the impugned proceedings dated 8.9.2003 is of no consequence, when once it is shown that basis for the impugned proceedings dated 8.9.2003 issued by the first respondent regarding the nature and extent of punishment is the decision of the government, communicated through memo dated

7.9.2003. Having unwittingly referred to a similar government memo dated 25.7.2003 the first respondent issued the proceedings dated 16.08.2003 in respect of certain officers, which proceedings were subsequently set aside by the Tribunal in O.A.No.5558 of 2003 and batch on 24.01.2006. It is obvious that realizing the folly, reference to the memo dated 7.9.2003 was omitted purposefully in the proceedings dated 8.9.2003 issued in respect of the petitioner and others.

14. In the impugned proceedings dated 8.9.2003, it is stated that the appeal against the order lies with the Principal Secretary to Government, Environment, Forests, Science & Technology, Andhra Pradesh, Hyderabad if preferred within ninety days from the date of receipt of the order. The memo dated 7.9.2003 directing the imposition of the punishments is issued by the Principal Secretary of the same department himself. The petitioner was therefore advised to file an appeal before the very same authority, who issued the direction imposing the punishments. It is a clear case of non-application of mind on the part of the first respondent, regarding the nature and extent of punishment to be imposed and he has abdicated his right to make an independent assessment of the punishment to be imposed, and referred the whole matter to the government along with the records and the government on consideration of the entire material took a decision to impose punishment of compulsory retirement and directed the first respondent to issue proceedings accordingly and report compliance. The first respondent merely acted in compliance of the directions given by the government. The mere fact that the impugned proceedings dated 8.9.2003 of the first respondent do not specifically refer to the memo dated 7.9.2003 does not in any way improve the situation, when once it is shown that the basis for imposing punishment by the first respondent has been the decision taken and communicated by the government and first respondent merely complied with the said directive of the government.

15. The Division Bench of this Court in '***D.Ramesh Sinha Vs. Cadre Authority for Key Personnel of Cooperative Central Banks/Apex Bank, Hyderabad***'[1] held as follows:

> "Having regard to the aforementioned notings in the records, we have no doubt whatsoever that the impugned orders of suspension have been passed pursuant to and in furtherance of the directions issued by the State Government. Power to initiate disciplinary proceedings against an employee or place him under suspension emanates from a statute. While exercising such statutory power, the competent authority, must therefore, apply its mind independently as to whether the conditions precedent for exercising such power exists. It is now trite that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him would be a non est in the eye of law. It is also well settled that while passing an order, if the statutory authority ignores the relevant factors or takes into consideration, factors not germane for the passing of the order, then such action or the order flowing from such action, would be vitiated in law. Equally well settled is the principle that the statutory authority while exercising statutory powers, must pose correct questions so as to apply correct legal principles and arrive at correct conclusions basing on the actual and exact state of affairs, and if he fails to do so, the same would amount to misdirection in law. Although decisions on this score are galore, suffice it to refer to the decision of the Apex Court in Commissioner of Police v. Gordhandas, AIR 1952 SC 16 and the decision of the Court of Appeal, Civil Division, in Secretary of State v. Tameside (1976) 3 All.ER 665."

16. The impugned proceedings dated 8.9.2003 imposing major penalty of compulsory retirement issued in pursuance of the Government memo dated 7.9.2003 is therefore wholly vitiated and hence cannot be sustained and the same is accordingly set aside. It is however open to the competent authority under the Rules to impose appropriate punishment after due application of mind independently and un-influenced by the government memo dated 7.9.2003.

17. The writ petition is accordingly allowed. No order as to costs.

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B.PRAKASH RAO, J

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G.V.SEETHAPATHY, J

Date: 02.01.2007

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[1] 2002 Suppl.(2) ALD 687